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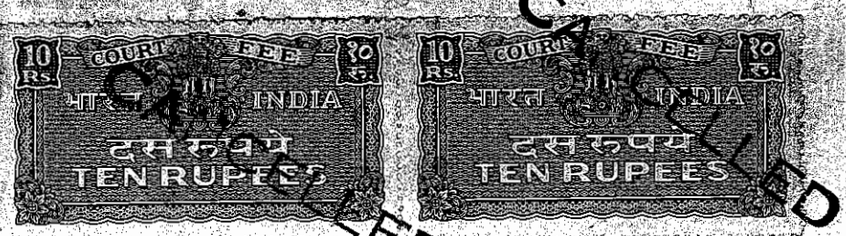

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IN THE HIGH COURT OF JUDICATURE AT JABALPUR

SA 331/05

MISC. (SECOND) APPEAL NO. 2117 /2000

(Appeal under Section 32 of the M.P.Accommodation Act, 1961)

APPELLANT .. Jugga Devi, W/o Ramulal Saklecha, aged 65 years, R/o Sadar Bazar, Dhamtari, District Dhamtari (MP)

Vs.

RESPONDENTS .. 1.(a) Smt.Satyawati, Wd/o Nemnath
(b) Krishna Kumar, S/o Nemnath Nanda
(c) Rajkumar, S/o Nemnath Nanda
(d) Sushil Kumar, S/o Nemnath Nanda
(e) Smt.Sudesh, D/o Nemnath Nanda
(f) Ku.Nirmala, D/o Nemnath Nanda
(g) Smt.Ranjna, D/o Nemnath Nanda
(h) Ashok Kumar, S/o Nemnath Nanda
(i) Smt. Anjna, D/o Nemnath Nanda
(j) Ku. Meena, D/o Nemnath Nanda
(k) Ravindra Kumar, S/o Nemnath Nanda
All R/o Bastar Road, Dhamtari, Teh & Distt; Dhamtari (M.P.)

2. Dasharath Singh Dhruv-wanshi, aged 32 years, Jai Bajrant Motor Works, Near Bombay Garage, Bajrang Chowk, Dhamtari, Distt: Dhamtari (M.P.)

7893

Filed on 29-9-05
by Shri S.D. Gupta Advocate

Rto. A.R.

MEMO OF APPEAL UNDER SECTION 32 OF THE M.P.ACCOMMODATION CONTROL ACT, 1961

APR

(118)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 329/2005
Smt. Jugga Devi Vs. Smt. Satyavati and others

SECOND APPEAL NO. 330/2005 &
Smt. Jugga Devi Vs. Smt. Satyavati and others

SECOND APPEAL NO. 331/2005
Smt. Jugga Devi Vs. Smt. Satyavati and others

Shri H.S. Patel counsel for the appellant.
Shri A.K. Pandey counsel for respondents 1(b) & 1(d)
Shri G.S. Agrawal learned Sr. Counsel with Shri Bharat Lal Sahu for respondent No. 1-K

Since the above-mentioned Second Appeals arise out of the same impugned order dated 15.9.2000 passed by Additional District Judge Dhamtari by which Misc. Civil Appeals No. 1/1992, 2/1992 and 3/1992 preferred under section 31 of the Chhattisgarh Accommodation Control Act (hereinafter referred to as "Act" for convenience) against the order dated 28.3.1992 passed by the Rent Controlling Authority in Case Nos. 1-A/90 (8) Year 1991-92, 2-A/90 (8) year 1991-92 and 3-A/90 (8) year 1991-92 respectively have been dismissed, they are disposed of by this common judgment.

JUDGMENT

(DELIVERED ON 05.1.2006)

Dhirendra Mishra,J

The facts giving rise to this bunch of appeals are that respondent No.2 in all the three cases were inducted as tenant in the suit houses. They filed three separate applications under section 25 of the Act stating therein that they were inducted as tenant by one Lala Nemnath and the respondents 1-a to 1-k are the legal heirs of said Lala Nemnath who was entitled to receive rent. However, the appellant is also claiming that the

rent is payable to him as he has received possession of the accommodation by the order of Civil Court and thus they have bona fide doubt as to who is entitled for rent. The land in question is situated at village Dhamtari bearing Khasra No. 816. The appellant preferred a civil suit No. 84-A/1985 against Lala Nemnath for declaration, possession and mesne profit which was dismissed by the trial Court. However, in appeal the suit was decreed vide judgment and decree dated 31.7.1990 as per annexure A-1. Second appeal preferred by defendant Lala Nemnath Nanda was also dismissed by the High Court as per annexure A-2. Thereafter, said Lala Nemnath Nanda preferred S.L.P No. (C) No. 6070/1991 before the Supreme Court which was also dismissed vide order dated 15.4.1991 as per annexure A-3.

2. In execution proceedings symbolic possession of the suit land was delivered to the appellant. Thereafter, respondent No.2 moved an application under section 25 of the Act stating therein that they had bona fide doubt regarding the present entitlement to receive rent of the suit accommodation as Lala Nemnath Nanda and Jugga Devi, both are claiming the suit land to be their ownership and therefore, permission to deposit the rent in the Court for two months was sought and after ascertaining about the entitlement the same be paid to the claimant entitled and the receipt of such deposit be provided to them. Rent Controlling Authority issued notice to the appellant and Lala Nemnath Nanda on the above application. They submitted their reply along with the documents in support of their claim. However, the Rent Controlling Authority disposed of the applications preferred by the tenants by recording a finding that the appellant has been given only the symbolic possession of the suit house in execution of the decree in her favour which does not amount to delivery of actual possession and therefore she cannot be considered to be the owner of the tenanted premises and rather Lala Nemnath Nanda is entitled to receive the rent and accordingly, it was directed that the tenant shall continue to pay rent to said Lala Nemnath

Nanda. The appeal preferred by the appellant has also been dismissed by recording the following findings:

(i) The appellant had filed a civil suit for declaration of title, possession and mesne profit and the same has been decreed only with respect to delivery of vacant possession of the suit land and thus it can be held that the appellant's claim for mesne profit has been rejected:

(ii) Definition of the landlord as per section 2-b of the Act is exhaustive and therefore it is not necessary that the landlord is the real title holder and owner of the suit house and the one who is receiving the rent for a long time even if he is not the owner, may be considered the owner of the tenanted premises for the purpose of the Act:

(iii) The relationship between Lala Nemnath and the respondent No.2 is of the landlord and tenant of the house constructed over the suit land and since the suit of the appellant has been decreed for vacant possession of the suit land, in execution of the above decree, the executing Court could not have delivered the vacant possession of the suit house as it is against the spirit of the decree:

(iv) In proceedings under section 25 of the Act only the entitlement to receive the rent of the accommodation is decided and the ownership can be decided only by a civil court of competent jurisdiction.

(v) Though the finding of the Rent Controlling Authority that the appellant cannot be considered as the real title holder as he has been given only symbolic possession of the suit land and therefore she is not entitled to receive rent

is erroneous yet the order passed by the Rent Controlling Authority is just and proper and requires no interference.

3. From the facts narrated above it is evident that there is no factual dispute between the parties. The only question for adjudication of these appeals is that in the admitted factual premises that in execution of the decree in favour of the appellant, the symbolic possession of the suit land was admittedly delivered to the appellant by the competent civil court, whether both the Courts below were justified in directing respondent No.2 of each case - the tenants to pay rent of the suit accommodation to the respondent No.1? Whether Lala Nemnath Nanda who was required to deliver vacant possession of the suit land to the decree holder after removing the construction over the suit land at his own expenses and after delivering possession to the decree holder he has been further restrained from interfering with the possession of appellant could legally claim the rent as landlord particularly when in execution of decree symbolic possession of suit land is delivered to the appellant and the decree stands discharged?

4. Learned counsel for the appellant submits that delivery of symbolic possession in execution of the decree amounts to actual delivery of possession. He relies upon the judgment of the Madhya Pradesh High Court in the matter of **Gambhira Vs. Smt. Rajju Raja and others** reported in **1987 JLJ 670** and submits that symbolic delivery of possession in execution of decree amounts to delivery of actual possession. It is further argued that against illegal interference in possession of suit land the appellant moved an application under Order 21 Rule 32 of the Code of Civil Procedure and the same was allowed on 23.4.1992. The revision preferred by the judgment debtor Lala Nemnath Nanda was rejected by Additional District Judge Dhamtari as per order of annexure A-4. Respondent No. 1-K

namely Ravindra Kumar Nanda filed a suit of annexure A-6 against the appellant and two others seeking relief of declaration that the decree in favour of the appellant is inexecutable. The suit was dismissed as withdrawn with cost with an observation that the plaintiff cannot institute any other suit under Order 23 Rule 1 (4) of the Code of Civil Procedure on the same issue. It is further submitted that said Ravindra Kumar Nanda filed yet another civil suit for recovery of rent against the tenant Kanhaiya and Lala Nemnath Nanda which was also dismissed as per order dated 20.11.1999 of annexure A-12. Since the possession of the suit accommodation has been delivered in execution of decree by Lala Nemnath Nanda, the judgment debtor, the claim of the legal heirs of the judgment debtor to receive the rent amounts to interference with the possession of the appellant over the suit land in violation of the decree of perpetual injunction. It is further submitted that as per section 2 (b) of the Act the definition of landlord includes every person not being the tenant who from time to time derive title under a landlord and as such Lala Nemnath delivered the possession of the suit land in execution of the decree and thus the plaintiff derived the title and therefore she is entitled to receive rent.

5. On the other hand learned counsel for the respondent supporting the judgment submits that father of respondent No. 1-K, the judgment debtor, was directed to deliver vacant possession of the suit land after removing the construction over it at his own expenses and since the judgment debtor has constructed 14 shops over the suit land prior to the institution of the suit and the same were in possession of the tenants, the symbolic possession of the land was handed over to the decree holder under Order 21 Rule 36 of the Code of Civil Procedure. The judgment debtor has a right to remove the material super

structure existing over the suit land in terms of the decree. The decree was not executable unless the tenants of the shop were evicted lawfully and under these circumstances in execution of the decree symbolic possession was handed over to the decree holder by the judgment debtor.

6. Relying upon the decision of Bombay High Court in the matter of **Kamlakar and Company Vs. Gulam Shafi Imambhai Musalman** reported in **AIR 1963 Bombay 42** learned counsel for the respondent submits that there is no relationship either contractual or by privity of estate between decree holder and the tenant giving symbolical possession does not create such relationship. Learned counsel for the respondent further relying upon the decision of the Privy Council in the matter of **Vallabhdas Narainji Vs. Development Officer, Bandra** reported in **AIR 1929 Privy Council 163,** on the decision of Madras High Court in the matter of **Atmakur Venkatasubbiah Chetty and another Vs. Thirupursundari Ammal and others** reported in **AIR 1965 Madras 185** and on the decision of Kerla High Court in the matter of **Kochunni Kartha and others Vs. Raman (died) legal representatives Balaraman and others** reported in **AIR 1967 Kerla 22** submits that according to the usages and customs in this country, buildings and other such improvements made on the land do not, by the mere accident of their attachment to the soil, become the property of the owner of the soil; and if the person who makes the improvement is not a mere trespasser, but is in possession under any bona fide title or claim of title, he is entitled either to remove the materials, restoring the land to the state in which it was before the improvement was made, or to obtain compensation for the value of the building if it is allowed to remain for the benefit of the owner of the soil – the option of taking the building or allowing the removal of the land, in those cases in which the building is

not taken down by the builder during the continuance of any estate he may possess. Thus he submits that the judgment debtor was entitled to remove the building, or if it is beneficial to the decree holder, the judgment debtor is entitled to obtain compensation for the value of the building. Learned counsel further relied upon the decision of the Supreme Court in the matter of **Smt. Shanti Sharma and others Vs. Smt. Ved Prabha and others** reported in **AIR 1987 SC 2028** and submits that the word "owner" has a definite significance and it means a person who builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be considered as owner and as such is entitled for eviction. He further relies upon the judgment of the Supreme court in the matter **of Vashu Deo Vs. Balkishan** reported in **(2002) 2 SCC 50** and submits that under section 116 of the Evidence Act, the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy and such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord and section 116 of the Evidence Act is not the whole law of estoppel between the landlord and the tenant. Thus it is argued that respondent No.2 who is admittedly the tenant of respondent No.1 is estopped from denying the respondent No.1 as his landlord. Learned counsel for the respondent further relies on the judgment of the Supreme Court in the matter of **Vannattankandy Ibrayi Vs. Kunhabulla Hajee** reported in **(2001) 1 SCC 564** and submits that what was let out to the respondent No.2 was the shop and not the land beneath the same and the provisions of the State Rent Act determine the rights of landlord and tenant and not by the provisions of the Transfer of Property Act. Rights of the landlord under the general law are substantially curtailed by the provisions of the State Rent Act.

7. I have heard learned counsel for the parties and perused the material available on record.

8. It is not disputed that the instant dispute is between the rival claimants for rent which arose as the tenant occupying the suit accommodation was in dilemma and bona fide doubt as to who is the actual owner of the suit premises and to whom the rent is payable. In execution of the decree in favour of the appellant by which Lala Nemnath Nanda, the judgment debtor was directed to hand over the vacant possession of the suit accommodation to the decree holder after removing the construction at his own expenses, the symbolical possession was duly handed over to the appellant without removing all the 14 shops constructed over the suit land. Thus the dispute is regarding entitlement to receive the rent from the tenants who are willing to pay the rent to the rightful owner. The objection of the respondents is that the judgment debtor was entitled to remove the structure as the decree was only with respect to the vacant possession of the suit land and in case the decree holder was willing to take the possession of the suit land with structure standing on it, in that case the judgment debtor is entitled to get compensation. However, from the perusal of the execution proceedings which is available with the record of the Rent Controlling Authority it is evident that the decree holder had mentioned all the 14 shops situated in the suit land in execution of the proceedings and the judgment debtor has delivered symbolic possession of the same to the decree holder.

9. In execution proceedings under Order 21 Rule 36 of the Code of Civil Procedure the symbolic possession is delivered by the officer of the Court and proclamation is made to the occupants of the property that the plaintiff has recovered it from the defendant and this is the only way in which the decree of the

Court awarding possession to the plaintiff, can be enforced and as in contemplation of law, both parties must be considered as being present at the time when delivery is made.

10. In the aforesaid circumstances delivery of possession of the suit property was given as against the defendant/judgment debtor which must be deemed equivalent to actual possession as has been held in the matter of Gambhira Vs. Smt. Rajju Raja (supra).

11. The judgment debtor was to remove construction and then hand over the vacant possession of the suit land to the decree holder. However, he has voluntarily handed over the suit land without removing the structure to the decree holder. His suit for declaration that the decree in favour of the decree holder is in - executable has been dismissed as withdrawn under Order 23 Rule 1(4) of the CPC. The subsequent suits filed by the defendant 1-K against the tenants for recovery of rent has also been dismissed by the Civil Court. In the aforesaid circumstances the findings of both the Courts below that the legal heirs of respondent No.1 still continue to be land lord and thus entitled to receive rent can not be justified.

12. So far as the law laid down in the matter of Kamlakar and Company (supra) is concerned, the same is distinguishable on the ground that the instant suit is between the two claimants of the land in the admitted factual premises that respondent No.1 has handed over the suit property in execution of the a decree to the appellant and therefore as per section 2-b of the Act the appellant derives the title to the suit accommodation. Similarly in the light of law laid down in the matter of Vallabdas Narainji (supra), in the matter of Atmakur Venkatasubbiah Chetty (supra) and in the matter of Kochunni Kartha and others (supra), it is not disputed that where the judgment debtor has made

improvement in the property and he is required to deliver vacant possession of the property after removing the structure, he is required either to remove the structure and restore the possession to its original condition or in case the decree holder if desires to take the possession with the structure, the judgment debtor may claim compensation towards the construction erected by him over the suit land. However, in the present case, the judgment debtor has delivered symbolic possession of the suit accommodation to the decree holder and the appellant is in possession of the same on the basis of the decree and in the aforesaid circumstances, the respondent No.1 cannot claim that he still continues to be the owner there of and therefore landlord of the suit premises and thus entitled to receive rent after voluntarily delivering the symbolic possession of the suit premises in execution of the decree.

13. So far as the decision of the Supreme Court in the matter of Smt. Shanti Sharma and others (supra) is concerned, the instant case is distinguishable on facts as in the instant case the judgment debtor has delivered possession of the suit premises in execution of the decree whereby he was directed to hand over the vacant possession of the suit land after removing the structure and the decree stands satisfied and therefore now it is not open to the judgment debtor/ original landlord to again claim that he is the landlord and thus is entitled to recover rent. Similarly rule of estoppel as given in section 116 of the Evidence Act shall not operate in the instant case because symbolic possession of the suit land has been voluntarily handed over to the decree holder in execution of the decree.

14. So far as the decision of the Supreme Court in the matter of Vannattankandy Ibrayi (supra) is concerned, it is true that the tenants were let out the building and not the land and the decree in favour of the appellant was only with respect to vacant

possession of the land. However, the judgment debtor was directed to hand over the vacant possession of the suit land after removing structure erected thereon and in execution of the above decree the judgment debtor has given symbolic possession of the suit land to the decree holder and thus the decree stands satisfied and therefore now it is not open to the judgment debtor to re-agitate that though in execution of the decree symbolic possession of the suit land has been given to the decree holder but structure is very much there and since the structures are there, he still continues to be the owner of the said structure and thus entitled to receive rent.

15. Learned additional District Judge even after recording a finding that the finding of the Rent Controlling Authority that because the symbolic possession of the suit land has been delivered to the appellant and therefore, he cannot be considered to be the real title holder is erroneous and even then the order passed by the Tribunal is not wrong on the face of it is contradictory and hence incorrect

16. Thus on the basis of documents and material available on record and admitted facts, both the Courts below have committed an illegality by arriving at the conclusion that the legal heirs of Lala Nemnath were entitled to receive the rent deposited by the tenant.

17. In view of the aforesaid discussion the appeal is allowed. Orders passed by both the Courts below are set aside. It is held that the appellant is entitled to receive rent from the tenants and the respondent No.2 in all the above cases. However, there shall be no order as to costs.

18. This order shall not prejudice the right of the judgment debtor to establish his claim for compensation in the court of competent jurisdiction with respect to the structure situated over the suit land.

Sd/-
Dhirendra Mishra
Judge